

AMENDED IN SENATE AUGUST 31, 2015

AMENDED IN SENATE JUNE 25, 2015

AMENDED IN ASSEMBLY JUNE 1, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

No. 621

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**Introduced by Assembly Member Roger Hernández**

February 24, 2015

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An act to add Section 2750.8 to the Labor Code, *and to add Article 8.6 (commencing with Section 1160) to Chapter 4 of Part 1 of Division 1 of the Unemployment Insurance Code*, relating to employment.

### LEGISLATIVE COUNSEL'S DIGEST

AB 621, as amended, Roger Hernández. Drayage truck ~~operators~~. *operators: Motor Carrier Employer Amnesty Program.*

Existing law governs the relationship between an employer and an employee with regard to hiring, promotion, discipline, wages and hours, working conditions, and administrative and judicial remedies. Existing law sets forth guidelines for determining whether a person who performs work for another pursuant to a contract is an employee or an independent contractor. Existing law authorizes the Labor Commissioner to investigate employee complaints and to conduct a hearing in any action to recover wages, penalties, and other demands for compensation.

This bill ~~would~~, *would establish the Motor Carrier Employer Amnesty Program pursuant to which*, notwithstanding any law, ~~relieve~~ a motor carrier performing drayage services *may be relieved* of liability for statutory or civil penalties associated with misclassification of commercial drivers as independent contractors if the motor carrier enters into a settlement agreement with the Labor Commissioner, *with the*

*consent of the Employment Development Department, prior to January 1, 2017, whereby the motor carrier agrees to convert all of its commercial drivers to employees, and the settlement agreement contains prescribed components, including, but not limited to, an agreement by the motor carrier to pay all wages, benefits, and taxes owed, if any. The bill would permit a settlement agreement to contain a provision authorizing the Labor Commissioner and the Employment Development Department to recover from the motor carrier ~~specified costs associated with the settlement agreement.~~ the reasonable, actual costs of the Labor Commissioner and the Employment Development Department for their respective review, approval, and compliance monitoring of that settlement agreement.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2750.8 is added to the Labor Code, to  
2 read:  
3 2750.8. (a) ~~Notwithstanding~~ *The Labor Commissioner and*  
4 *the Department of Employment Development shall administer the*  
5 *Motor Carrier Employer Amnesty Program pursuant to which,*  
6 *notwithstanding any law, a an eligible motor carrier performing*  
7 *drayage services at ~~one or more ports in this state~~ any port shall*  
8 *be relieved of liability for statutory or civil penalties associated*  
9 *with the misclassification of commercial drivers as independent*  
10 ~~contractors~~ *contractors, as provided by this program, if the eligible*  
11 *motor carrier enters into executes a settlement agreement with the*  
12 *Labor Commissioner whereby the eligible motor carrier agrees to*  
13 ~~convert~~ *to, among other things, properly classify all of its*  
14 *commercial drivers to as employees.*  
15 (b) *As used in this section, the following terms shall have the*  
16 *following meanings:*  
17 (1) *“Commercial driver” means a person who holds a valid*  
18 *commercial driver’s license who is hired or contracted to provide*  
19 *port drayage services.*  
20 (2) *“Department” means the Employment Development*  
21 *Department.*

1     (3) *“Eligible motor carrier” means a motor carrier that shall*  
2 *not have any of the following on the date it applies to participate*  
3 *in the program:*

4     (A) *A civil lawsuit that was filed on or before January 1, 2015,*  
5 *pending against it in a state or federal court that alleges a*  
6 *misclassification of a commercial driver.*

7     (B) *A penalty assessed by the department pursuant to Section*  
8 *1128 that is final imposition of that penalty.*

9     (4) *“Motor carrier” means a registered owner, lessee, licensee,*  
10 *or bailee of a commercial motor vehicle, as set forth in subdivision*  
11 *(b) of Section 15210 of the Vehicle Code, that operates or directs*  
12 *the operation of a commercial motor vehicle on a for-hire or*  
13 *not-for-hire basis to perform port drayage services.*

14     (5) *“Port” means any sea or river port located in this state.*

15     (6) *“Program” means the Motor Carrier Employer Amnesty*  
16 *Program established by this section and as provided by Article*  
17 *8.6 (commencing with Section 1160) of Chapter 4 of Part 1 of*  
18 *Division 1 of the Unemployment Insurance Code.*

19     (c) (1) *A motor carrier shall only apply to participate in the*  
20 *program by doing all of the following:*

21     (A) *Submit an application to the Labor Commissioner, on a*  
22 *form provided by the Labor Commissioner. The application shall,*  
23 *at a minimum, require the motor carrier to establish it qualifies*  
24 *as an eligible motor carrier.*

25     (B) *Report on the results of a self-audit in accordance with the*  
26 *guidelines provided by the Labor Commissioner.*

27     (2) *A proceeding or action against a motor carrier pursuant to*  
28 *Sections 2698 to 2699.5, inclusive, shall not be initiated after the*  
29 *motor carrier has submitted an application for participation in*  
30 *the program, but may be initiated if the motor carrier’s application*  
31 *is denied.*

32     (3) *If a motor carrier’s application to participate the program*  
33 *is denied by the Labor Commissioner, the application or its*  
34 *submission shall not be considered an acknowledgment or*  
35 *admission by the motor carrier that it misclassified its commercial*  
36 *drivers as independent contractors, and the application or its*  
37 *submission shall not be construed in any way to support an*  
38 *evidentiary inference that the motor carrier failed to properly*  
39 *classify its commercial drivers as employees.*

1 (d) Before January 1, 2017, the Labor Commissioner, in  
2 cooperation and with the consent of the department, may negotiate  
3 and execute a settlement agreement with an eligible motor carrier  
4 pursuant to the program that applied to participate in the program.  
5 The Labor Commissioner shall not execute a settlement agreement  
6 on or after January 1, 2017.

7 (e) Prior to the Labor Commissioner executing a settlement  
8 agreement, an eligible motor carrier shall file its contribution  
9 returns and report unreported wages and taxes for the time period  
10 it seeks relief under the settlement agreement.

11 ~~(b)~~

12 (f) A settlement agreement ~~entered into~~ executed by the Labor  
13 Commissioner and an eligible motor carrier pursuant to  
14 ~~subdivision (a) the program shall contain~~ require an eligible motor  
15 carrier to do all of the following:

16 (1) ~~An agreement by the motor carrier to pay~~ Pay all wages,  
17 benefits, and taxes owed, if any, to or in relation to all of its  
18 ~~converted commercial drivers—covering~~ reclassified from  
19 independent contractors to employees for the period of time from  
20 the first date of misclassification to the date the settlement  
21 agreement is ~~entered into~~, executed, but not exceeding the  
22 applicable statute of limitations.

23 (2) ~~An agreement by the motor carrier to maintain~~ Maintain  
24 any converted commercial driver positions as employee positions.

25 (3) ~~An agreement by the motor carrier~~ Consent that any future  
26 commercial drivers hired to perform the same or similar duties as  
27 those employees converted pursuant to ~~subdivision (a) the~~  
28 settlement agreement shall be presumed to have employee status  
29 and that the eligible motor carrier shall have the burden to prove  
30 by clear and convincing evidence that they are not employees in  
31 any administrative or judicial proceeding in which their  
32 employment status is an issue.

33 (4) Immediately after the execution of the settlement agreement,  
34 secure the workers' compensation coverage that is legally required  
35 for the commercial drivers who were reclassified as employees,  
36 effective on or before the date the settlement agreement is executed.

37 (5) Provide the Labor Commissioner and the department with  
38 proof of workers' compensation insurance coverage in compliance  
39 with paragraph (4) within five days of securing the coverage.

40 (6) Pay the costs authorized by subdivision (g), if required.

1 ~~(4) Any~~

2 (7) *Perform any other requirements or provisions the Labor*  
3 ~~Commissioner deems and the department deem~~ necessary to carry  
4 out the intent of this ~~section~~ *section, the program*, or to enforce  
5 the settlement agreement.

6 ~~(e) As used in this section, the following terms have the~~  
7 ~~following meanings:~~

8 ~~(1) “Commercial driver” means a person who holds a valid~~  
9 ~~commercial driver’s license hired or contracted with to provide~~  
10 ~~port drayage services.~~

11 ~~(2) “Motor carrier” means a registered owner, lessee, licensee,~~  
12 ~~or bailee of a commercial motor vehicle as set forth in subdivision~~  
13 ~~(b) of Section 15210 of the Vehicle Code, who operates or directs~~  
14 ~~the operation of any such vehicle on a for-hire or not-for-hire basis~~  
15 ~~to perform port drayage services.~~

16 ~~(3) “Port” means any sea or river port in this state.~~

17 ~~(d) A settlement agreement entered into pursuant to subdivision~~  
18 ~~(a) may contain a provision authorizing the Labor Commissioner~~  
19 ~~to recover from the motor carrier an amount necessary to cover~~  
20 ~~the Labor Commissioner’s reasonable costs associated with the~~  
21 ~~review, approval, and compliance with the settlement agreement.~~

22 ~~(e) This section shall not apply to a motor carrier that has a~~  
23 ~~pending civil lawsuit against it in state or federal court alleging~~  
24 ~~misclassification of commercial drivers where the lawsuit was~~  
25 ~~filed prior to January 1, 2015.~~

26 ~~(f) This section shall apply only to settlement agreements entered~~  
27 ~~into by the Labor Commissioner prior to January 1, 2017.~~

28 ~~(g) A settlement agreement may require an eligible motor carrier~~  
29 ~~to pay the reasonable, actual costs of the Labor Commissioner~~  
30 ~~and the department for their respective review, approval, and~~  
31 ~~compliance monitoring of the settlement agreement. The costs~~  
32 ~~shall be deposited into the Labor Enforcement and Compliance~~  
33 ~~Fund. The portion of the costs attributable to the department shall~~  
34 ~~be transferred to the department upon appropriation by the~~  
35 ~~Legislature.~~

36 ~~(h) The settlement agreement may include provisions for an~~  
37 ~~eligible motor carrier to make installment payments of amounts~~  
38 ~~due pursuant to paragraphs (1) and (6) of subdivision (f) in lieu~~  
39 ~~of a full payment. An installment payment agreement shall be~~  
40 ~~included within the settlement agreement and charge interest on~~

1 *the outstanding amounts due at the rate prescribed in Sections*  
2 *1113 and 1129 of the Unemployment Insurance Code. Interest on*  
3 *amounts due shall be charged from the day after the date the*  
4 *settlement agreement is executed. The settlement agreement shall*  
5 *contain a provision that if a motor carrier fails, without good*  
6 *cause, to fully comply with terms of the settlement agreement*  
7 *authorizing installment payments, the settlement agreement shall*  
8 *be null and void and the total amount of tax, interest, and penalties*  
9 *for the time period covered by the settlement agreement shall be*  
10 *immediately due and payable.*

11 *(i) The Labor Commissioner and the department may share any*  
12 *information necessary to carry out the program. Sharing*  
13 *information pursuant to this subdivision shall not constitute a*  
14 *waiver of any applicable confidentiality requirements and the party*  
15 *receiving the information shall be subject to any existing*  
16 *confidentiality requirements for that information.*

17 *(j) (1) Notwithstanding any other law and pursuant to the*  
18 *program, an eligible motor carrier that executed and performed*  
19 *its obligations pursuant to a settlement agreement shall not be*  
20 *liable, and the Labor Commissioner or the department shall not*  
21 *enforce, any civil or statutory penalties, including, but not limited*  
22 *to, remedies available under subdivision (e) of Section 226, that*  
23 *might have become due and payable for the time period covered*  
24 *by the settlement agreement, except for the following penalties:*

25 *(A) A penalty charged under Section 1128 of the Unemployment*  
26 *Insurance Code that is final on the date of the settlement agreement*  
27 *is executed, unless the penalty is reversed by the California*  
28 *Unemployment Insurance Appeals Board.*

29 *(B) A penalty for an amount an eligible motor carrier admitted*  
30 *was based on fraud or made with the intent to evade the reporting*  
31 *requirements set forth in this division or authorized regulations.*

32 *(C) A penalty based on a violation of this division or Division*  
33 *6 (commencing with Section 13000) and either of the following:*

34 *(i) The eligible motor carrier was on notice of a criminal*  
35 *investigation due to a complaint having been filed or by written*  
36 *notice having been mailed to the eligible motor carrier informing*  
37 *the motor carrier that it is under criminal investigation.*

38 *(ii) A criminal court proceeding has already been initiated*  
39 *against the eligible motor carrier.*

1     (2) (A) Notwithstanding any other law and pursuant to the  
2     program, an eligible motor carrier that executed and performed  
3     its obligations pursuant to a settlement agreement shall not be  
4     liable, and the Labor Commissioner or the department shall not  
5     enforce, any unpaid penalties, and interest owed on unpaid  
6     penalties, on or before the date the settlement agreement was  
7     executed, pursuant to Sections 1112.5, 1126, and 1127 of the  
8     Unemployment Insurance Code for the tax reporting periods for  
9     which the settlement agreement is applicable, that are owed as a  
10    result of the nonpayment of tax liabilities due to the  
11    misclassification of one or more commercial drivers as independent  
12    contractors and the reclassification of these commercial drivers  
13    as employees, except that penalties, and interest owed on penalties,  
14    established as a result of an assessment issued by the department  
15    before the date the settlement agreement was executed shall not  
16    be waived pursuant to the program.

17    (B) For purposes of paragraph (1), state personal income taxes  
18    required to be withheld by Section 13020 of the Unemployment  
19    Insurance Code and owed by the motor carrier pursuant to Section  
20    13070 of the Unemployment Insurance Code shall not be collected,  
21    if the eligible motor carrier issued an information return pursuant  
22    to Section 6041A of the Internal Revenue Code reporting payment  
23    or if the commercial driver certifies that the state personal tax has  
24    been paid or that he or she has reported to the Franchise Tax  
25    Board the payment against which the state personal income tax  
26    would have been imposed.

27    (3) A refund or credit for any penalty or interest paid prior to  
28    the date an eligible motor carrier applied to participate in the  
29    program shall not be granted.

30    (4) Except for violations described in Section 2119 of the  
31    Unemployment Insurance Code, the department shall not bring a  
32    criminal action for failing to report tax liabilities against an  
33    eligible motor carrier that executed and performed its obligations  
34    pursuant to a settlement agreement for the tax reporting periods  
35    subject to the settlement agreement.

36    (k) The statute of limitations on any claim or liability that might  
37    have been asserted against a motor carrier based on the motor  
38    carrier having misclassified a commercial driver as an independent  
39    contractor shall be tolled from the date a motor carrier applies  
40    for participation in the program through the date the Labor

1 *Commissioner either denies the motor carrier participation in the*  
2 *program or the motor carrier, as an eligible motor carrier, has*  
3 *failed to perform an obligation under the settlement agreement,*  
4 *whichever is later.*

5 *(l) The recovery obtained by the Labor Commissioner on behalf*  
6 *of a reclassified commercial driver pursuant to a settlement*  
7 *agreement shall be tendered to the commercial driver on the*  
8 *condition that the commercial driver shall execute a release of all*  
9 *claims the commercial driver may have against the eligible motor*  
10 *carrier based on the eligible motor carrier's failure to classify the*  
11 *commercial driver as an employee. A commercial driver shall not*  
12 *be under any obligation to accept the terms of a settlement*  
13 *agreement. If a commercial driver declines to accept the terms of*  
14 *a settlement agreement, the commercial driver shall not be bound*  
15 *by the settlement agreement, except that the eligible motor carrier*  
16 *shall still reclassify the commercial driver as an employee and*  
17 *that commercial driver shall be precluded from pursuing a claim*  
18 *for civil penalties or statutory penalties covered by the period of*  
19 *time covered by the settlement agreement. If a commercial driver*  
20 *does not accept the terms of a settlement agreement, the motor*  
21 *carrier shall be excused from performing its requirement under*  
22 *the settlement agreement to pay the amount acknowledged in the*  
23 *settlement agreement to be due to that commercial driver.*

24 *(m) (1) If the Labor Commissioner determines an eligible motor*  
25 *carrier violated or failed to perform any of its obligations under*  
26 *a settlement agreement, the Labor Commissioner may file a civil*  
27 *action to enforce the settlement agreement.*

28 *(2) (A) If the Labor Commissioner files a civil action seeking*  
29 *only recovery of the amounts due to commercial drivers under the*  
30 *settlement agreement, the Labor Commissioner may obtain judicial*  
31 *enforcement by filing a petition for entry of judgment for the*  
32 *liabilities due and remaining pursuant to the settlement agreement.*

33 *(B) After filing a petition pursuant to subparagraph (A), the*  
34 *Labor Commissioner may file an application for an order to show*  
35 *cause and serve it on the eligible motor carrier. Within 60 days*  
36 *of the date the Labor Commissioner filed the order to show cause,*  
37 *the court shall hold a hearing and enter a judgment. The judgment*  
38 *shall be in amounts which are due and owing to commercial drivers*  
39 *pursuant to the settlement agreement with credits, if any, for*  
40 *applicable payments the eligible motor carrier made under the*



1 settlement agreement. A judgment entered pursuant to this  
2 paragraph shall not preclude subsequent action to recover civil  
3 penalties or statutory penalties by the Labor Commissioner, or by  
4 an employee pursuant to Section 2698 to 2699.5, inclusive.

5 (3) If the court determines in any action filed by the Labor  
6 Commissioner that a motor carrier has violated or otherwise failed  
7 to perform any of its obligations under a settlement agreement,  
8 the court shall award the Labor Commissioner costs and  
9 reasonable attorney's fees.

10 SEC. 2. Article 8.6 (commencing with Section 1160) is added  
11 to Chapter 4 of Part 1 of Division 1 of the Unemployment  
12 Insurance Code, to read:

13  
14 Article 8.6. Motor Carrier Employer Amnesty Program

15  
16 1160. (a) The department shall collaborate with the Labor  
17 Commissioner to administer the Motor Carrier Employer Amnesty  
18 Program established by Section 2750.8 of the Labor Code and as  
19 provided by this article.

20 (b) The definitions set forth in Section 2750.8 of the Labor Code  
21 shall apply to this article.

22 1162. Commercial drivers who are classified as employees  
23 pursuant to a settlement agreement shall be eligible to receive a  
24 refund of elective coverage contributions pursuant to Section 708  
25 and may submit a claim for refund pursuant to Section 1178.

26 1164. The department may promulgate regulations and take  
27 any other actions necessary or appropriate to implement this  
28 article and further its participation in the program.